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October 15, 1996

Mr. William F. Canon
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: **MM Docket No. 96-168**

Dear Mr. Canon

Submitted on behalf of Terry L. Dunning, are an original and four copies of his Reply Comments in the above-captioned proceeding.

Very truly yours



Richard A. Helmick

Enclosure

cc w/encl.: Corey J. McCaslin

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Federal Communications Commission
Office of Secretary



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BEFORE THE

Federal Communications Commission
Office of Secretary

Federal Communications Commission

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 96-168
Table of Allotments)	RM-8836
FM Broadcast Stations)	
Weaverville, California)	

REPLY COMMENT OF TERRY L. DUNNING

Terry L. Dunning ("Dunning"), through his attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby submits his comments with respect to the above-captioned Notice of Proposed Rule Making and, in support thereof, sets forth the following.

1. Dunning has petitioned the Commission in the above-captioned matter to allot FM Channel 299A to Weaverville, California as that community's second local transmission service. Channel 276C2 was assigned to Weaverville, California, effective June 17, 1996, as that community's first local service pursuant to Report and Order (DA96-65), MM Docket Nos. 94-76-77, released May 3, 1996, at the request of Corey McCaslin ("McCaslin"). McCaslin is a principal of Phoenix Broadcasting, Inc. which has filed a construction permit application (File No. BPH-960718MB) for the Channel 276C2 allocation at Weaverville.

2. McCaslin opposes Dunning's request to allocate Channel 299A to Weaverville (1990 population, 1,489) and has counterproposed the allotment of Channel 299C3 to Hayfork (1990 population, 900) as that community's first local service. McCaslin asserts that his counterproposal

is entitled to a priority because, first, he proposes a first local service to Hayfork whereas Dunning proposes a second local service to Weaverville and, secondly, a 299C3 allocation at Hayfork is a more efficient use of frequency spectrum than is a 299A allocation at Weaverville.

3. Set forth as Attachment A is a statement of Dunning supporting his original proposal to assign Channel 299A to Weaverville and restating his intention to pursue a construction permit application for such channel if allocated. Set forth as Attachment B is a second statement as to why his statement was not able to be filed on or before the September 30 comment date.

4. The Commission should take note of the fact that McCaslin is not a disinterested party in this proceeding, but, rather, is seeking to insulate the Channel 276C2 allocation at Weaverville from competition. As set forth in the statement of Dunning at Attachment A, Hayfork is a community with serious economic problems and declining population due to the closing of a lumber mill in that community, whereas Weaverville is the Trinity County seat of local government, a local retail business hub and the center of the Trinity County school system. For these reasons, Dunning submits that McCaslin's counterproposal is really not practicable, but, rather, is merely an attempt to insulate the existing 276C2 allocation at Weaverville from competition.

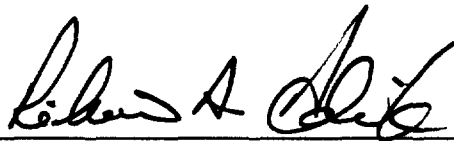
5. Section 1.420(d) of the Commission's Rules permits counterproposals, but only if advanced in initial comments. Accordingly, since Dunning did not file any initial comments, he is precluded from filing a counterproposal in his reply comments. Nonetheless, as set forth in Dunning's statement, it would be possible to upgrade a Channel 299A allocation at Weaverville to

- 3 -

a Channel 299C3 allocation and if the Channel 299A allocation is made to Weaverville, it is his intention to apply for such allocation and, ultimately, pursue a one-step upgrade of such allocation.

Respectfully submitted

TERRY L. DUNNING

By: 
Richard A. Helmick

COHN AND MARKS
1333 New Hampshire Ave.
Suite 600
Washington, D.C. 20036
(202) 452-4830

Its Attorneys

October 15, 1996

ATTACHMENT A

STATEMENT

Terry L. Dunning here by states under penalty of perjury as follows:

1. On June 19, 1996, I filed a petition for rule making requesting the allocation of FM Channel 299A at Weaverville, California; in response to that petition, the Commission issued a Notice of Proposed Rule Making, MM Docket No. 96-168, proposing such allocation.

2. I reaffirm my support for the Channel 299A allocation at Weaverville, California, as the best economically viable use of Channel 299 frequency allocation for the small inter-mountain Trinity County and the Weaverville community, the county seat of local government, retail business hub, and county school system.

3. I intend to file an amendment to modify my original Channel 299A petition to a Class C3 restricted in response to the counter proposal for a 299C3 to the adjacent small mill town of Hayfork, Ca., (a community with sever economic problems after the lumber mill closed and is being moved to Lincoln, Ca.). The Hayfork, Ca. counter proposal is being offered by Phoenix Broadcasting, an applicant for a new Class C2 for Weaverville, Ca. .

4. I affirm that if Channel 299A or 299C3 allocation proposal is adopted, it is my intent to file, either individually as a Native American minority, or as a principal of an applicant, a construction permit application for such channel.

Date 10-11, 1996


Terry L. Dunning

PROPOSED ALLOCATION
TERRY L. DUNNING
299C3 107.7 MHz
WEAVERVILLE, CALIFORNIA

FCC - ORIGINAL

ENGINEERING STATEMENT

Concerning a request for rulemaking to assign Channel 299 to Weaverville, California.

Terry L. Dunning has requested that the FCC allot Channel 299A to Weaverville, California, and the FCC has published a notice of proposed rule making MM Docket No. 96-168, RM-8836 adopted August 2, 1996. Corey J. McCaslin has proposed that Channel 296C3 be allocated to Hayfork, California, as an alternative to Weaverville. The proponent wishes to show that the Class A allocation requested for Weaverville can be increased to Class C3 on Channel 299 with an appropriate site restriction.

Terry L. Dunning has retained the services of Vir James P.C., Consulting Radio Engineers, to prepare the engineering portions of this comment modification of the request for FM rule making for Weaverville.

Measurements in this report are in the metric system. Exhibit E-1B-2 tabulates the appropriate conversion factors.

The proposed reference coordinates for Channel 299C3 can be assigned with a site restriction of 7 km to the west of Weaverville as follows:

NL: 40 Deg 44 min 00 sec
WL: 123 Deg 01 min 30 sec

A study of existing and proposed FM stations and allocations on file as of the date of this modified request for rulemaking shows that there are neither cochannel nor adjacent channel commercial FM stations within the minimum distance separations specified in Section 73.207 of the FCC rules.

PROPOSED ALLOCATION
 TERRY L. DUNNING
 299C3 107.7 MHz
 WEAVERVILLE, CALIFORNIA

CH.	FREQ.	NEAREST ALLOCATION CITY	CALL	SEPARATION IN KM ACTUAL	REQ'D
296C3	107.1	Shasta Lake CA	ALLOC	55	43
297C2	107.3	Rio Dell CA	KMXGCP	110	56
298B	107.5	Colusa CA	KPPL	171	145
299C3	107.7	Kigs Beach CA	KHWG	310	153
300A	107.9	Mount Shasta CA	KMJC	89	89

There are no stations or proposals for frequencies 10.6 or 10.8 MHz removed from 107.7 MHz within 50 km of the proposed Weaverville so therefore no IF interference can result.

Hence, the proposed allocation of Channel 299C3 to Weaverville, California, would meet required separation distances with respect to existing or proposed FM stations and allocations.

Therefore the table of Allotments in Section 73.202 can be amended as follows:

Weaverville, California

Present: 276C2

Proposed: 276C2, 299C3

This modification to the request for rule making has been prepared in accordance with the appropriate parts of Section 73 of the FCC Rules and Regulations.



Respectfully submitted,

Timothy C. Cutforth

Timothy C. Cutforth, P.E.
 7 October 1996

STATE OF COLORADO

EXHIBIT E-1B-1

CITY AND COUNTY OF DENVER

TIMOTHY C. CUTFORTH, BEING DULY SWORN, STATES

That he is a Consulting Radio Engineer with offices located at 965 South Irving Street, Denver, Colorado 80219.

That he is President and Director of Engineering with Vir James, P.C. Consulting Radio Engineers, Denver, Colorado.

That he received a degree of Bachelor of Science, with major in Electrical Engineering from Colorado State University at Fort Collins, Colorado in 1972.

That he is a Registered Professional Engineer (No. 16905) in the State of Colorado.

That he is a certified Professional Broadcast Engineer (50046) by the Society of Broadcast Engineers, Inc.

That he is a member of the Society of Broadcast Engineers, Inc. (No. 3813).

That he is a full member of the Association of Federal Communications Consulting Engineers.

That he is a member of the IEEE.

That he is a qualified and experienced Radio and Television Engineer whose qualifications are a matter of record with the Federal Communications Commissions.

That he is a life member of the Broadcast Pioneers.

That the calculations and/or measurements and exhibits in the accompanying report were made by him personally or under his direction, and that all facts contained herein are true of his own personal knowledge or belief: and on such statements made on belief, they are believed to be true.

Timothy C. Cutforth
Affiant

Subscribed and sworn to before me

This 7th day of October 1996

Notary Public Virginia K. Coughlin

Date of Commission Expiration December 21, 1996



ATTACHMENT B

Terry L. Dunning hereby states under penalty of perjury as follows:

1. I am currently living and working in Ukiah, Ca., approximately 140 miles from Fortuna, Ca..

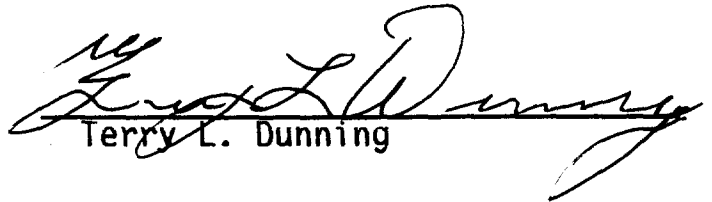
2. I did not receive written notice of the proposed rule making released August 9, 1996 by the FCC, nor the written mailed notification by my attorney dated August 12, 1995.

3. My mail box was checked August 29, 1996 and there was no letters from my FCC attorney present, or FCC.

4. I received a telephone recorded message on my Fortuna home answering machine from my FCC attorney during the last week of September, indicating his office had received back in the mail his August 12, 1996 letter of notification, and a prepared document for me to sign and return.

5. My FCC attorneys office was contacted and a copy of the letter, prepared document and a copy of a counter rule making proposal was faxed for me to read. The needed signed document was returned to my attorney by fax the same day.

Date: 10-11-96

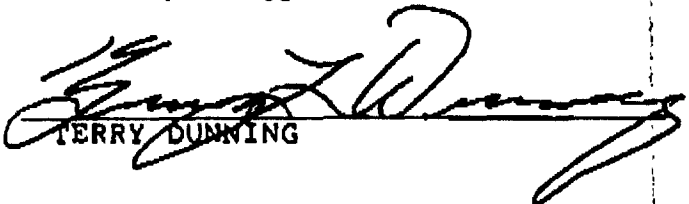

Terry L. Dunning

STATEMENT

Terry L. Dunning hereby states under penalty of perjury as follows:

1. On June 19, 1996, I filed a petition for rule making requesting the allocation of FM Channel 299A at Weaverville, California; in response to that petition, the Commission issued a Notice of Proposed Rule Making, MM Docket No. 96-168, proposing such allocation.
2. I reaffirm my support for the Channel 299A allocation at Weaverville, California, and state that if such allocation is adopted, it is my intent to file, either individually or as a principal of an applicant, a construction permit application for such channel.

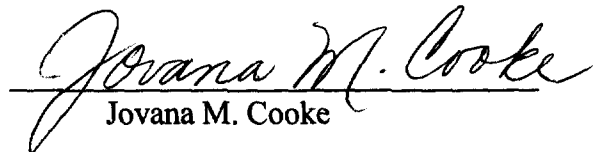
Dated 10/11, 1996


TERRY DUNNING

CERTIFICATE OF SERVICE

I, Jovana M. Cooke, a secretary in the law firm of Cohn and Marks, hereby certify that I have, this 15th day of October, 1996, sent, by U.S. mail, postage pre-paid, the foregoing **REPLY COMMENTS OF TERRY L. DUNNING** to the following:

Corey J. McCaslin
1351 Arcadian Avenue, No. D
Chico, California 95926


Jovana M. Cooke